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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1694.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioner,

v.

ROBERT NEWMAN, M.D.,
Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

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Table of Contents.

	Page
Introductory	1
Counterstatement of the Questions Presented	1
Statement of the Case	2
Preliminary	2
The background of this litigation	4
The paramount public interest	5
POINT I. Since the term of the Third July 1972 Grand Jury which issued the subject subpoena has expired and that Grand Jury has been discharged, this proceeding to enforce compliance with the subpoena issued by that Grand Jury became moot upon the New York Court of Appeals' vacatur of the adjudication of contempt	8
POINT II. The court below correctly held that the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) effected no repeal or modification of the authority conferred by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) upon the Attorney General and the Secretary of Health, Education and Welfare to provide for absolute confidentiality in the case of patients in methadone maintenance programs	10
The need for absolute confidentiality in the case of methadone programs	10

Page

The Legislative History of P.L. 92-255 referred to by petitioner (pp. 9-10) is misleading and based on isolated comments taken out of context 14

The Conference Report 15

The "coordinated long-term Federal strategy to combat drug abuse" 16

Conclusion. The petition for a writ of certiorari should be denied 18

Appendix:

Excerpt From the Transcript of Dr. Newman's Appearance Before 3rd Grand Jury for New York County on July 25, 1972 19

TABLE OF CASES.

Blackburn v. Alabama, 361 U. S. 199 6

Escobedo v. Illinois, 378 U. S. 478 6

Golden v. Zwickler, 394 U. S. 103, 108 9

Jackson v. Denno, 378 U. S. 368 6

Pennington v. Coxe, 6 U. S. (2 Cranch) 33, 59 13

Roe v. Wade, U. S. , 35 L. Ed. 2d 147, 161 10

Page

SEC v. Medical Committee for Human Rights, 404 U. S. 403, 406 9

United States v. 24 Cans Containing Butter, 148 F. 2d 365, 367 13

Zuber v. Allen, 396 U. S. 168, 186 14

AUTHORITIES.

Legislative History, U.S.C.C. & A.N., April 30, 1972, page 915 2

P.L. 92-255 2

21 U.S.C. §1175 2

P.L. 91-513 2

21 U.S.C. §872(c) 2

42 U.S.C. §242(a) 2

21 U.S.C. §1101 7

House Report No. 92-920, 92d Cong., 2d Sess., 1972 U.S.C.C. & A.N. 930-940 15

Special Action Office for Drug Abuse Prevention Regulations, 21 C.F.R. 401, 37 Fed. Reg. 24636-24639 ..... 3, 4, 9

F.D.A. Regulations, 21 C.F.R. §§ 130.44, 130.48, 37 Fed. Reg. 26790-26807; 21 C.F.R. 130, 37 Fed. Reg. 6940 ..... 3, 9

Congressional Record, 117 Cong. Rec. S20189-S20251, H676-H715 14

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THE PEOPLE OF THE STATE OF NEW YORK,

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Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

Introductory.

Petitioner seeks to have this Court review a judgment of the New York Court of Appeals (N. Y. 2d , May 31, 1973) holding that Robert Newman, M.D., as Director of the New York City Methadone Maintenance Treatment Program, could validly refuse to comply with a grand jury subpoena directing him to produce confidential photographs of certain of his patients, where such refusal was authorized by the Attorney General of the United States and the Secretary of Health, Education and Welfare, pursuant to Federal legislation.

Counterstatement of the Questions Presented.

1. Whether these proceedings to compel compliance with a subpoena issued by the Third July 1972 Grand

Jury are not moot since that grand jury's term has expired and it has been discharged?

We submit that this question should be answered in the affirmative.

2. Whether the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255; 21 U. S. C. §1175) effected an implied repeal of the authority conferred by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513; 21 U. S. C. §872[c] and 42 U. S. C. §242[a]) upon the Attorney General and the Secretary of Health, Education and Welfare to provide for absolute confidentiality in the case of patients in methadone maintenance programs?

The New York Court of Appeals held that it did not.

3. Whether the decision of the court below, which agreed with and upheld the interpretation and construction of the legislation as authorizing absolute confidentiality given to it by the Special Action Office for Drug Abuse Prevention, the Attorney General, the Secretary of Health, Education and Welfare, the Food and Drug Administration and the Bureau of Narcotics and Dangerous Drugs, the agencies charged with its administration, supervision and enforcement, is not correct?

We submit that it is, that the decision follows well established canons of statutory construction and that this case does not warrant further review.

Statement of the Case.

Preliminary.

Drug abuse in the United States has reached alarming epidemic proportions (Legislative History, U.S.C.C. & A.N., April 20, 1972, p. 915).

Methadone maintenance is a proven, highly successful modality for the treatment of heroin addiction which has received the highest priority in the nationally coordinated effort to reach, treat and rehabilitate drug abusers.

The New York City Methadone Maintenance Treatment Program (NYCMMTP) is the largest and most rapidly expanding addiction treatment program in the nation. It has over 10,000 voluntarily enrolled patients in treatment at 43 clinics and is currently processing thousands of applications from street addicts seeking admission into the program. Other methadone programs in the City, public and private, treat approximately 22,000 additional patients.

Experts in the field of addiction treatment unanimously agree that confidentiality of information as to patients' identity and treatment is absolutely essential to the success of every drug abuse treatment program, and that it is important for the operators of programs such as the NYCMMTP to be able to give assurances of confidentiality to persons entering treatment. See 21 CFR 401, 37 Fed. Reg. 24636. Congress and the agencies charged with interpreting, administering and supervising the federal legislation have adopted this position as a uniform national policy.*

*Section 303 of the Public Health Service Act, as amended by the Comprehensive Drug Abuse Prevention and Control Act of 1970, 42 U.S.C. §242a; Department of Health, Education and Welfare, FDA Regs., 21 CFR §130.44, 37 Fed. Reg. 26790-26807; FDA Regs., 21 CFR 130 published in 37 Fed. Reg. 6940, 6943 and declared effective July 24, 1972; Drug Abuse Office and Treatment Act of 1972, 21 U.S.C. §1175 Special Action Office for Drug Abuse Prevention Regs., 21 CFR 401 published in 37 Fed. Reg. 24636-24639; 21 U.S.C. §872(c).

A forceful and explicit statement of the rationale underlying federal policy in this area is made by the Special Action Office for Drug Abuse Prevention in 21 CFR 401, 37 Fed. Reg. 24636:

> "If society is to make significant progress in the struggle against drug abuse, it is imperative that all unnecessary impediments to voluntary treatment be removed. *There is clear agreement among drug abuse treatment program operators that their ability to assure patients and prospective patients of anonymity is essential to the success of their programs.* The identification of a person as a patient of a general practitioner or hospital clinic is not ordinarily of great significance, but the identification of a person as an enrollee in a narcotic treatment program can, in and of itself, have profoundly adverse consequences.
>
> "It was in recognition of these considerations, among others, that Congress enacted section 408 of Public Law 92-255 (21 U.S.C. 1175). It must be emphasized that the operation of this section in no way creates a sanctuary for criminals. The enrollment of an addict in a treatment program takes away nothing, immunizes nothing, that would be available to law enforcement authorities if the program did not exist or the addict did not enroll in it. The only effect of his enrollment is to diminish the likelihood of his continued criminal conduct, and if the price of this is to isolate the records generated by the enrollment itself, this is a small price indeed in the light of the social benefits." (Italics added.)

The background of this litigation.

During the week of June 5, 1972, a New York City Police Department detective appeared at one of the NYC-MMTP clinics and requested the opportunity of viewing photographs of all male Negro patients which are main-

tained by the clinic as part of the patients' medical records. He stated that he was investigating a homicide and wished to show the photographs to an alleged witness who claimed to have seen the alleged perpetrator being treated at the clinic on a prior occasion. The detective's request was refused.

Thereafter, a subpoena was served on Dr. Robert G. Newman, as director of the NYCMMTP demanding production of "photographs of all Male Negro patients between the ages of 21-35 in the Methadone Maintenance Treatment Program."

A motion to quash the subpoena was made on the ground, *inter alia,* that controlling federal law prohibits disclosure of the photographs or any other information that would identify patients in a methadone maintenance treatment program.

The motion was denied, and Dr. Newman's continued refusal to comply with the court's direction that he produce confidential photographs of his patients, which were demanded by the grand jury subpoena was held to be contempt of court. He was sentenced to a term of imprisonment for 30 days. Although the District Attorney vigorously opposed the application, sentence was stayed pending appeal.

By its decision on May 31, 1973, the New York Court of Appeals vacated the adjudication of contempt and directed that the motion to quash the subpoena be granted.

The paramount public interest.

From the outset the prosecutor has approached this matter solely from the viewpoint of furthering a criminal investigation which has as its goal the apprehension of a

single individual suspected of having committed a crime against another individual.* That, however, is not the paramount public interest.

The breach of confidentiality that would follow if the prosecutor were upheld in his position would cause irreparable damage to the NYCMMTP and all similar

*The shrill tone of the petition seems more appropriate to the irresponsible tabloid press, attributing the blame for crime to the courts. If "a suspected murderer remains at large," it is not the fault of the New York Court of Appeals, as petitioner would so unfairly have one believe (Petition, pp. 3, 11). Such arguments have never been found persuasive by this Court (e. g., *Escobedo v. Illinois*, 378 U. S. 478, *Blackburn v. Alabama*, 361 U. S. 199; *Jackson v. Denno*, 378 U. S. 368).

During the hearing below, counsel for Dr. Newman made the following response to the argument that a murder investigation was in progress:

> "Dr. Newman has no reason to thwart the grand jury investigation in this matter. As a private citizen, he's all in favor of having the grand jury catch whatever criminal element there is.
>
> "On the other hand, this is no different than saying it would be easier for the district attorney and the grand jury to use unauthorized wiretap information or information obtained through an unauthorized search and seizure. It may be easier, but it is prohibited. * * *
>
> * * *
>
> "They can have any witness describe the suspect to a police artist, which is done often with great success. They can have a stakeout outside of the clinic with the witness, to see if the patient shows up. They can do anything that is lawfully within their realm to investigate * * *" (pp. 32, 38, Record on Appeal to New York Court of Appeals).

Moreover, respondent's counsel has never had the opportunity to examine the prosecutor and police to determine what, if any, investigation was made beyond the request to view the photographs in the NYCMMTP files.

programs throughout the nation which treat tens of thousands of former heroin addicts.

It is the opinion of experts in the field of addiction treatment that the sought disclosure would destroy the trust and confidence of patients in their physicians and counselors, so vital for this type of treatment to be effective, and would discourage a large number of prospective patients from seeking treatment. *This opinion was not contradicted during the proceedings below.*

Congress has recognized that "drug abuse, especially heroin addiction, substantially contributes to crime" (21 U.S.C. §1101). And in his State-of-the-State Message, Governor Rockefeller referred to the terrorization of the public "by the continued prevalence of narcotics addiction and the crime * * * it breeds" (N.Y.L.J., Jan. 4, 1973, p. 4, col 3).

At the same time, a study of criminal arrest rates based on a random sampling of patients in the NYC-MMTP, made in cooperation with the New York City Police Department, showed a dramatic decline in the arrest rate of patients; for those in treatment for thirteen months or more, there was a 96% decrease in arrests (see, Editorial "Cutting Addict Crime," N. Y. Times, Sept. 6, 1972).

We submit that the public interest will best be served by strengthening and expanding drug abuse treatment programs which are enrolling voluntarily, and successfully rehabilitating, tens of thousands of hard-core heroin addicts, each of whom while remaining on the street untreated poses as great a threat to society as the one man so assiduously sought by the prosecutor.

POINT I.

Since the term of the Third July 1972 Grand Jury which issued the subject subpoena has expired and that Grand Jury has been discharged, this proceeding to enforce compliance with the subpoena issued by that Grand Jury became moot upon the New York Court of Appeals' vacatur of the adjudication of contempt.

Petitioner writes as though the investigation by the Third July 1972 Grand Jury into the death of Talmadge Berry is still a viable proceeding. In fact, it is not.

We have been advised by counsel for petitioner that the term of the Third July 1972 Grand Jury has expired and it has been discharged. Accordingly, the proceedings below to enforce respondent's compliance with a subpoena issued by that particular grand jury became moot upon the vacatur of the adjudication of contempt.

Another grand jury may or may not decide to resume the investigation at this time.

Another grand jury may or may not believe that the police have exhausted all other means of identifying the suspect and that the circumstances warrant the issuance of a subpoena for the confidential photographs.

Another grand jury may or may not be persuaded by the appeal Dr. Newman made to the Third July 1972 Grand Jury to withdraw its subpoena because the overriding public interest requires absolute confidentiality of patient records and identifying information.*

*Dr. Newman's testimony before the Third July 1972 Grand Jury appears at pages 58-74 of the printed "record on appeal" in the New York Court of Appeals. Excerpts therefrom are reproduced as an Appendix hereto at pages 19-23, *infra*.

Another grand jury may or may not be persuaded by the unanimity of expert opinion, shared by federal law enforcement officials,* that the public interest is best served by measures calculated to strengthen and expand programs such as NYCMMTP, one of the foremost being the ability to assure street addicts of absolute confidentiality if they voluntarily enroll in the program.

The foregoing indicates that there is no longer the type of existing controversy necessary for this Court to retain jurisdiction to decide the merits. *SEC v. Medical Committee for Human Rights*, 404 U. S. 403, 406; *Golden v. Zwickler*, 394 U. S. 103, 108.

In *Roe v. Wade*, U. S. , 35 L. Ed. 2d 147, 161, this Court observed:

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*On November 8, 1972, the United States Department of Justice, Bureau of Narcotics and Dangerous Drugs, conferred upon Dr. Robert G. Newman a "Grant of Confidentiality" for all of the operating clinics of the New York City Methadone Maintenance Treatment Program covered under IND No. 7306 and BNDD Registration No. PN 0090201. The "Grant of Confidentiality" provides in pertinent part, as follows:

> "Under the authority vested in the Attorney General by Title 21, Section 872(e) of the United States Code, and delegated to the Director of the Bureau of Narcotics and Dangerous Drugs by Title 28, Section 0.100, of the Code of Federal Regulations, *I hereby authorize you to withhold the names and other identifying characteristics of persons who are the subjects of research conducted pursuant to and in conformity with this research project. You may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of such research.* This grant of confidentiality shall apply to all other persons engaged in carrying out the research program and shall cover all persons who are subjects of such research while the grant is in effect." (Italics added.)

All methadone maintenance programs are still investigational and all patients therein the "subjects of research" (21 C.F.R. §130.48(b), 37 Fed. Reg. 26806; 21 C.F.R. 130, 37 Fed. Reg. 6940).

> "The usual rule in federal cases is that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated."

Such controversy no longer exists in this case and the petition should be denied.

The petitioner suggests (p. 11) that courts in other jurisdictions may arrive at an interpretation of the law inconsistent with that of the New York Court of Appeals. We doubt it, and we know of no pending appellate cases. If, however, that should occur, then will be time enough for this Court to review the matter and resolve any conflict. There is no need to do so at this time since not only does no conflict exist, but none threatens.

POINT II.

The court below correctly held that the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) effected no repeal or modification of the authority conferred by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) upon the Attorney General and the Secretary of Health, Education and Welfare to provide for absolute confidentiality in the case of patients in methadone maintenance programs.

The need for absolute confidentiality in the case of methadone programs.

Methadone is an addictive narcotic which must be continuously taken by the patient; its abrupt discontinuance produces severe withdrawal symptoms.*

*The medical guidelines of the NYCMMTP provide for detoxification of patients maintained on the usual dosage of 80-120 mg. per day to take place over a period of at least three weeks.

For this reason, the methadone maintenance patient is in a completely different position than his counterpart in a drug-free modality. Unlike the patient in a drug-free program, the methadone maintenance patient does *not* retain the option of simply discontinuing treatment whenever he feels threatened by the likelihood of impending or actual breach of confidentiality. He must return to the clinic for his daily medication.

An addict admitted to a methadone maintenance treatment program is in fact entering, knowingly, a situation from which there is no immediate escape, and in which the clinical staff controls the medication upon which he is pharmacologically dependent from one day to the next.*

*The dangers posed by the potential for abuse in this type of situation were discussed by Dr. Newman in 1970, two years prior to the onset of this litigation, and are treated in Brecher, Licit and Illict Drugs (Little, Brown & Co. 1972), in Chapter 19, "The Future of Methadone Maintenance," where the following appears (p. 178):

> "The heroin addict today is a serf of the heroin black market. When he goes on methadone maintenance, he becomes a potential serf of whoever controls the methadone program. This is not the fault of methadone, of course; it is the result of his becoming addicted to heroin in the first place. Whether on heroin or methadone, the addict must dance to whatever tune the piper plays.
>
> "Most existing methadone maintenance programs play a sensible tune.
>
> * * *
>
> "Let us suppose, however, that methadone maintenance programs drift into the hands of agencies with other goals. One example is a police department, which might use a methadone maintenance program as a recruiting center for stool pigeons, or witnesses. Leaders of the black community are particularly concerned that the power of those who control methadone maintenance may be misused to repress black organizations and aspirations. These are not idle imaginings. In at least one city, patients on methadone maintenance have already been organized to vote for a political candidate who promised to support a

Understandably, therefore, such addicts must be assured of absolute confidentiality to enlist them voluntarily in programs such as NYCMMTP.

Congress has recognized the distinction which grows out of the unique, still experimental, treatment involved in methadone maintenance. For that reason the absolute confidentiality provisions of Public Law 91-513 are limited to drug research programs, such as NYCMMTP. On the other hand, the confidentiality provision in Public Law 92-255 (21 U.S.C. §1175) applies to *all* "drug abuse prevention functions" including drug-free treatment programs, drug abuse education programs, etc., whether or not related to research into the long-term effects of addictive drugs such as methadone.

Read in this light, it is immediately evident that there is no conflict among the various statutes and regulations. Certainly, there is no basis for finding that the 1972 Act

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(footnote continued):

> continuation of their supply. In a number of other cities, methadone programs are deeply enmeshed in local policies.
>
> "Probation and parole departments have been establishing or planning to establish methadone maintenance programs in several states and cities—and police departments may be next. The patient on methadone maintenance who must placate a police officer, or a probation or parole officer empowered both to return him to prison and to cut off his methadone, is in a vise with two turnscrews.
>
> "A thoughtful review of this problem was presented at the Third National Conference on Methadone Treatment (1970) by Dr. Robert G. Newman, director of the New York City Health Department's Methadone Maintenance Treatment Program. 'It is my conviction,' Dr. Newman stated, 'that the abuse and misuse of addiction treatment programs poses at least as great a threat to our patients as does the abuse of illicit drugs.' "

impliedly repealed the 1970 Act. In *United States v. 24 Cans Containing Butter,* 148 F. 2d 365, 367, the Court stated:

> "Implied repeal or limitation of one act by another is never favored. It is not for the courts, unless the conflict between two acts is inescapable and compelling, to exclude from the coverage of an act matters which its terms expressly include, on the theory that another act, whose general purpose seems inconsistent has impliedly repealed or limited the act under review. Only where it is found that it is not possible for both acts to coexist can an act be held to repeal or limit another, and then only in respect to the precise point of conflict. It certainly cannot be said that there is any fatal inconsistency between the two acts here."

The proper approach to the questions of statutory construction presented by this case—and the one employed by the court below—was stated by Chief Justice Marshall in *Pennington v. Coxe,* 6 U. S. (2 Cranch) 33, 59:

> "Where the legislature distinguishes between different objects, and in imposing a duty on them evidences a will to charge them in different situations, it is not for the courts to beat down these distinctions on the allegation that they are capriciously made, and therefore to be disregarded. It is the duty of the court to discover the intention of the legislature, and to respect that intention. Where the provisions of two acts are so alike each other, that the comparison exhibits only a contrast, instead of saying that their opposing regulations were designed to be similar, it would seem much more reasonable to say that the one act exhibits a legislative mind materially variant in the particulars where the difference exists from what is exhibited by the other."

The quaintness of the Court's language should not obscure its relevance to the case at bar. Absolute confidentiality expressly provided for by the Congress in P.L. 91-513 is "so unlike" the balancing test provided in P.L. 92-255 that it "seems much more reasonable to say" that one was intended to deal with methadone and other research programs, while the other applies to a broader class of "drug abuse prevention functions" and programs in which absolute confidentiality, while desired, is not as essential.

The Legislative History of P.L. 92-255 referred to by petitioner (pp. 9-10) is misleading and based on isolated comments taken out of context.

Petitioner refers to the floor discussion of the bills that eventually became the Drug Abuse Office and Treatment Act of 1972. The discussion in the Senate on December 2, 1971, participated in by many members, fills 62 pages of the Congressional Record (117 Cong. Rec. S20189-S20251). The discussion in the House on February 3, 1972, also participated in by numerous members, appears at pages H676-H715 of the Congressional Record for that day.

Obviously, isolated fragments of the remarks of individual members are not evidence of an Congressional alleged intent impliedly to repeal a major piece of legislation (91-513)* enacted only two years earlier. In *Zuber v. Allen*, 396 U. S. 168, 186, this Court wrote:

*During the floor discussion, the 1970 Act was referred to several times. Senator Scott, "one of the original cosponsors" of the 1972 Act, stated (117 Cong. Rec. S20239):

> "One of the major efforts of this administration has been directed toward stamping out the disastrous scourge

> "We consider our conclusions in no way undermined by the colloquy on the floor between Senator Copeland and Senator Murphy upon which the dissent places such emphasis. A committee report represents the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation. Floor debates reflect at best the understanding of individual Congressmen. It would take extensive and thoughtful debate to detract from the plain thrust of a committee report in this instance. There is no indication, however, that the question of nearby differentials and the meaning of 'market * * * differentials customarily applied' were precisely considered in the floor dialogue. The exchange is not only brief but also inconclusive as to meaning."

The Conference Report.

The Joint Explanatory Statement of the Committee of Conference (House Report No. 92-920, 92d Cong., 2d Sess.; 1972 U.S.C.C. & A.N. pp. 930-940) states with respect to "confidentiality of patient records" (p. 940):

(footnote continued):

> of drug abuse. Both within the United States and abroad, the President has taken a personal hand in initiating and guiding Federal action.
>
> "In the legislative area, these actions include his proposal of the Comprehensive Drug Abuse Prevention and Control Act of 1970, which the President signed into law in October of that year. I was gratified to take an active part in the passage of this vital consolidation and revision of our dangerous-drug laws."

This is hardly indicative of Congress' alleged intent to effectuate an implied repeal of the "vital" 1970 Act.

> "The conferees wish to stress their conviction that the strictest adherence to the provisions of this section is absolutely essential to the success of all drug abuse prevention programs. Every patient and former patient must be assumed that his right to privacy will be protected. Without that assurance, fear of public disclosure of drug abuse or of records that will attach for life will discourage thousands from seeking the treatment they must have if this tragic national problem is to be overcome.
>
> "Every person having control over or access to patients' records must understand that disclosure is permitted only under the circumstances and conditions set forth in this section. Records are not to be made available to investigators for the purpose of law enforcement or for any other private or public purpose or in any manner not specified in this section."

There is no indication in this statement by the Committee of Conference, or anywhere else during the floor discussion of the bills, that Congress intended to alter in the slightest the power it had conferred by P.L. 91-513 upon the Attorney General and the Secretary of Health, Education and Welfare to provide for absolute confidentiality of information that would identify patients in a drug research program.

The "coordinated long-term Federal strategy to combat drug abuse."

The 1972 Act (21 U.S.C. §§1101-02) declares it to be the national policy to "develop a comprehensive, coordinated long-term Federal strategy to combat drug abuse," and charges the Director of the Special Action Office with the duty of coordinating the drug abuse prevention functions of the various federal agencies and those of state and local governments (21 U.S.C. §§221,

229). Nowhere, however, is it suggested that there should be a "single uniform approach to be followed by all drug research and treatment programs" (Petition, p. 9).

In the fight against drug addiction, there is room for a variety of approaches, methadone maintenance is only one, drug-free programs another. Obviously such dissimilar treatment programs cannot be forced into one uniform mold. It was never the intent of Congress that they should be.*

*Since petitioner has referred to the floor discussion in the Senate on December 2, 1971, we note the following statement by Senator Brock which illustrates our point (117 Cong. Rec. S20250):

> "At the present time the Federal Government is involved in a great many efforts designed to approach the drug abuse problem on a number of different fronts. Work is being done on the methodology of rehabilitating addicts, on the development of a workable detoxification agent which can ease the physical pain of withdrawal, on the development of a long-lasting antagonist drug to be used in the treatment of heroin addicts, and in a great many more areas vital to a comprehensive approach to this Nation's drug abuse problems.
>
> "All of these efforts are highly experimental in nature, and this is as it must be. We have no answers in the field of drug abuse. Few, if any, treatment programs have been able to claim any real success in the rehabilitation of drug addicts. We know that our education and prevention programs leave a good deal to be desired. In short, a great deal of work is yet to be done.
>
> "The Special Action Office for Drug Abuse Prevention, proposed in the President's message and in the legislation now before us, will perform a critical role in our efforts to provide solutions to the problems of drug abuse. It will coordinate and direct the entire Federal effort in this area. It will make certain that each component performs its assigned tasks, and that each serves to complement the functions and achievements of the other coordinates."

CONCLUSION.

The petition for a writ of certiorari should be denied.

Dated: New York, N. Y.
June 26, 1973.

Respectfully submitted,

THOMAS R. NEWMAN,
Counsel for Respondent.

BENJAMIN H. SIFF,
Of Counsel.

APPENDIX.

Excerpt From the Transcript of Dr. Newman's Appearance Before 3rd Grand Jury for New York County on July 25, 1972.

"A. Obviously you're involved in a particular investigation which again I admit is extremely serious. I just want to emphasize to the grand jury that what I'm involved in is professionally is treatment and to treat successfully thousands and thousands of patients in the Methadone Maintenance Treatment Program. That my position in this matter of confidentiality, that my position respectfully not to comply with the request for the photographs is not just my own individual sentiments. This isn't a decision that I alone reached. I'm basing my own decision on what I have seen in the Congressional records, the statements, the intent that I have seen expressed in writing in the Federal Registry of the Food and Drug Administration, which unequivocally states their intent that there must be confidentiality and total confidentiality of the records of patients in drug abuse programs. I refer to the unequivocal intent expressed in the Congressional Record by the Congress of the United States, which again states without question that total confidentiality is an absolute must if drug abuse programs are going to be able to succeed. As a resident also of the County of New York City, I share with you the desire to apprehend criminals, to apprehend murderers. I just urge you to consider that for our interest, for the interest of the City of New York, as well as for our patients, as well as for potential patients that the confidentiality of the patient's records be kept absolutely uncompromised, and that is the plea that I would like to make to you.

Mr. Dudley: Any questions of Doctor Newman?

Q. Here's a question by one of the Jurors. When a patient enters the program, do you promise secrecy to the patient? A. Yes, sir, we do. It is explicitly emphasized in our procedure manual which governs the operation of every single clinic in which we have currently, the population is 6,400 patients are enrolled. We have a statement that the photographs, number 1, are required. We have a statement that the photographs are required, we also have a statement that concerns the patient's regarding the use of these photographs which is explained by law concerned in that regard. Let me say that before that manual was written we had the experience, it happened to be in the same clinic, where people would come in, and enter the program on one day, and then fail to show up again. And we were advised in this, and a year and a half ago by the clinic staff that's when patients were told they'd have to produce 2 photographs. One for an identification card, and one for the maintenance in the nursing stage of the clinic. That several patients refused to come back because they were certain of the possible disclosure of these photographs or other use of these photographs in criminal actions. And with that experience, again this is not a hypothesis on our part. This was the experience that we had, and this lead us to include in the procedure manual specific reference to assure patients that these photographs are kept confidential.

Q. The people that have left, if we were only to ask for people that have left the Methadone Program, would you still consider these persons patients, and refuse to comply? A. I would consider that divulging information from the records of former patients, it would have exactly the same impact on the relationship between patient and staff.

Q. Doctor Newman, why do you feel that the whole Methadone Program would be jeopardized by producing the photographs to the grand jury? A. Our program emphasizes the critical nature of safeguarding the confidentiality of the patient's records. We have very frequently met with all different types of members of all of our clinics, which numbers 37 of them in the City. Word of the particulars subpoena which as Mr. Dudley said was issued to a unit supervisor at one of the clinics. Word of that subpoena has now gotten around to every single one of our clinics. Now they will know about it in the Central Office, by word of mouth among the staff in the various clinics. Everybody knows about this procedure. The staffs of all the clinics will know what the outcome of the procedure are, certainly the patients in that particular clinic now and I can just tell you how rapidly this sort of a result is spread from clinic to clinic.

Q. In other words, they will know, because you will tell them, is that what you're saying? A. No, sir, I emphasize that I did not let it known in the clinic that this is the particular procedure that is going on. It's now common knowledge, just common knowledge, and everybody in the clinic will want to know what the outcome is of this particular case.

Q. Doctor Newman, another juror wants to know you mentioned that there are other legal avenues or other recourses that your office will have to get the information that we need in this case, did you mention that in your— A. Just now.

Q. In your testimony today? A. I don't believe I did.

Q. Another juror would like to know, shouldn't the safety of the public be considered with a possible methadone killer on the loose? A. Obviously it has to be considered. Again the safety of the public, the safety of the people of New York City, in the case of one possi-

ble murderer, that is one thing that has to be considered. On the other hand, we're talking about the danger that everyone, you know faces living in Manhattan. Addiction and the addict is the number one domestic problem. Methadone programs is one of the higher, I would say the highest priority response to this overwhelming program. And I am concerned, and I am convinced that this, the disclosure of patient's records will threaten this very effective treatment program, with the result that tens of thousands of addicts will continue to do and return to do, and that is terrorize, to rob, to steal to do everything that it takes to support a habit. It's that danger that I'm addressing myself to.

Mr. Dudley: Thank you. We're going to conclude this ladies and gentlemen.

Q. Could you briefly tell us how, effective your methadone program has been? Do you have any statistics on that? A. Yes, briefly I would say it is uniquely effective in the treatment of heroin addicts. More effective than other program that I know of. Very briefly our retention of people that have entered the program and remain in treatment, we have admitted roughly 7,500 patients, since the program began a year ago, and have increased the rate of growth. We have retained in treatment, approximately 85 percent of that number. This type of retention is unmatched by any other program that I know of. We are also successful in terms of employment, and the rate of employment among our patients climbs drastically, the arrest rate which is obviously a very critical measure. The arrest rate decreases drastically when patients are admitted to the program, depending if public assistance decreases. So that I would say that this a very extremely effective program. And that this is the case is really apparent in

the fact that every level of Government, the City of New York, The State of New York, the Federal Government have given this particular type of program the very highest priority in dealing with the number one program."